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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,560	09/08/2003	David Harris	Brook.1003	3261

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EXAMINER

LE, HUYEN D

ART UNIT

PAPER NUMBER

2643

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/658,560	<b>Applicant(s)</b> HARRIS ET AL.	
	<b>Examiner</b> HUYEN D. LE	<b>Art Unit</b> 2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-16 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

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### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/10/04</u> . | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kamimura (U.S. patent 4,409,442).

Regarding claim 1, Kamimura teaches a foldable headphone unit that comprises a top member (16, 17 and 18, or 11-1 and 11-2), a first extendable sidepiece (11-1, 12-1 and 30), a second extendable sidepiece (11-2, 12-2 and 30), a first earpiece (13-1), and a second earpiece (13-2).

Kamimura teaches the first and second extendable earpieces can be extended and allow the first and second earpieces to pivot as claimed (figures 1 and 8).

Regarding claims 2-3, Kamimura teaches a padding member (22-1, 22-2) as claimed (figure 1).

Regarding claims 9-10, Kamimura teaches a method of folding a headphone unit that comprises a top member (16, 17 and 18, or 11-1 and 11-2), a first extendable sidepiece (11-1 or 12-1), a second extendable sidepiece (11-2 or 12-2), a first yoke assembly (30), a second yoke assembly (30), a first earpiece (13-1), and a second earpiece (13-2).

Kamimura further teaches the first and second extendable earpieces can be extended and thereby allowing the first and second earpieces to pivot as claimed (figures 1 and 8).

Art Unit: 2643

3. Claims 1, 4, 7, and 9-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Gorike (U.S. patent 4,571,746).

Regarding claim 1, Gorike teaches a foldable headphone unit that comprises a top member (7, or 1 and 2), a first extendable sidepiece (1, 3, 5, 16, 11), a second extendable sidepiece (2, 4, 6, 16, 11), a first earpiece (8), and a second earpiece (8).

Gorike further teaches the first and second extendable earpieces can be extended and thereby allowing the first and second earpieces to pivot as claimed (figures 1 and 8).

Regarding claims 4, 7 and 11-15, Gorike teaches the first extendable sidepiece that comprises a first upper-side member (1), a first extension band (3), a first lower-side member (5, 16) and a first yoke assembly (16, 11). Gorike further shows the second extendable sidepiece that comprises a second upper-side member (2), a second extension band (4), a second lower-side member (6) and a second yoke assembly (16, 11).

Regarding claims 9-10, Gorike teaches a method of folding a headphone unit that comprises a top member (7 or 1 and 2), a first extendable sidepiece (1, 3, 5), a second extendable sidepiece (2, 4, 6), a first yoke assembly (16, 11), a second yoke assembly (16, 11), a first earpiece (13-1), and a second earpiece (13-2).

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorike (U.S. patent 4,571,746).

Regarding claims 8 and 16, Gorike teaches a headphone unit as mentioned above in paragraph 3, Gorike lacks teaching of the first and second yoke assemblies having the forked shapes as claimed. However, the examiner takes the Office Notice that providing a yoke assembly having a forked shape to couple to the earpiece is very well known in the art.

Since Gorike does show a pivot point to rotate the earpieces (8); it therefore would have been obvious to one skilled in the art to provide a forked shape for the yoke assembly (11, 16) of Gorike for providing a better pivot point for the earpiece.

*Allowable Subject Matter*

6. Claims 5-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Art Unit: 2643

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (703) 305-4844. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on (703) 305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HL  
July 26, 2004

  
HUYEN LE  
PRIMARY EXAMINER

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